

Jennifer Pando

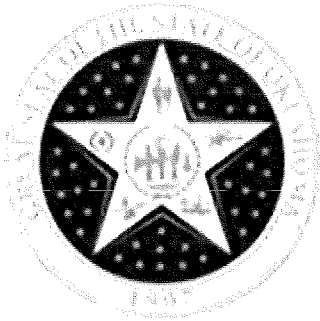
From: Thomas, Laura <Laura.Thomas@dac.state.ok.us>
Sent: Monday, July 6, 2020 1:09 PM
To: Daprotest; PPB BoardCommunications
Subject: [EXTERNAL] request to recuse Doyle & Luck - Shirley Cloyd
Attachments: PPB letter to luck from district 9.pdf; PPB letter to doyle from district 9.pdf

Please distribute the attached recusal request to the Chairman and board members particularly Luck and Doyle. Thank you. This applies to the following:

Shirley Cloyd, inmate 416862
John D. Fortney, inmate 581744
Daniel N. Looney, inmate 397478
Larissa Clark, inmate 278720 - *Inactive*
Derrick Ryan Gray, inmate 436619 - *9-2020*

You have already received our written objection on Cloyd and we will also be appearing.
You will receive under separate email the written objections on the others by 5 p.m. this day.
We will be appearing on Cloyd, Gray and Looney.

Thank you.



LAURA AUSTIN THOMAS
DISTRICT ATTORNEY
PAYNE & LOGAN COUNTIES

Ninth Prosecutorial District
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**LAURA AUSTIN THOMAS
DISTRICT ATTORNEY**

July 6, 2020

Mr. Adam Luck
Pardon and Parole Board Member
2915 Classen Blvd., Suite 405
Oklahoma City, OK 73106

Dear Mr. Luck:

As District Attorney for the 9th District of the State of Oklahoma, I write to request that you recuse from consideration of the following cases currently scheduled for review by the Oklahoma Pardon and Parole Board: **Shirley Cloyd, inmate # 416862, John D. Fortney, inmate # 581744, Daniel N. Looney, inmate # 397478, Larissa Joy Clark, a/k/a Singelton, inmate # 278720 and Derreck Ryan Gray, inmate # 436619.** The laws and regulations of Oklahoma provide clear guidance regarding the conduct expected by the members of the Oklahoma Pardon and Parole Board. From the time you were appointed to the board, you have actively and publicly exhibited a bias which has demonstrated a lack of partiality and conflict of interest. This activism is contrary to your constitutional and ethical duties as a Pardon and Parole Board member, and is the basis for my request for your recusal.

Impartiality is a fundamental and legal obligation for a Pardon and Parole Member. The Oklahoma Constitution, the Oklahoma Ethics Rules, and even the Values listed on the home page of the Pardon and Parole Board website, mandate impartiality.

CONSTITUTION

"It shall be the duty of the Board to make an impartial investigation and study of applicants for commutations, pardons or paroles, and by a majority vote make its recommendations to the Governor of all persons deemed worthy of clemency." OKLA. CONST. VI, § 10

"All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I,, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as to the best of my ability." OKLA. CONST. XV, § 1

OKLAHOMA ETHICS RULE 4.4

Except as permitted by law or these Rules, a state officer or employee shall not use his or her State office (1) for his or her own private gain, (2) for the endorsement of any product, service or enterprise, (3) for the private gain of a family member or persons with whom the state officer or employee is affiliated in a nongovernmental capacity, including nonprofit organizations of

which the state officer or employee is an officer or member, or (4) for the private gain of persons with whom the state officer or employee seeks employment or business relations. These prohibitions shall not apply to any act or endorsement if the act or endorsement is customary for the state officer or employee's contract of employment or if otherwise permitted or authorized by the Constitution or statutes or by these Rules. A state officer or employee may promote or solicit funds for civic, community or charitable organizations, including those promoting businesses or industries, or civic, community or charitable fundraising events provided the state officer or state employee receives nothing for doing so except the costs associated with the promotion or event paid for from funds of a charitable organization. No individual or other entity may pay for, or reimburse the charitable organization for, any such costs and gratuities; provided, however, nothing shall prevent individuals or other entities from making customary donations or paying sponsorship fees to the charitable organization.

OKLAHOMA ETHICS RULE 4.7

"In the event a state officer "determines circumstances would cause a reasonable person with knowledge of all the relevant facts to question his or her impartiality in the matter; the state officer or employee shall not participate in the matter unless he or she is required to do so by law or permitted to so by these Rules." 74 O.S. § Rule 4.7

VALUES (as listed on the website of the Pardon and Parole Board's home page)

The Pardon and Parole Board strongly believes and is committed to the ethical, unbiased, and professional performance of duties and will continually strive for excellence and fairness by making decisions that maintain a delicate balance between public safety, victim's rights, and the successful re-integration of the offender.

On your website, www.adamluck.us, you provide a bio of yourself which includes your role as a member of the Pardon and Parole Board as well as a national board member for Center for Employment Opportunities. On this website you have included four videos, a Tedx Talk from April 6, 2019, entitled, "Create Change: From Apathy to Activation," an article entitled, "The Way Down: Adam Luck's Familial Advocacy," a link with your photo entitled, "The Case for Sentencing Reform" which includes your Op-Ed advocating for SQ805, and a City Care video entitled, "The Odyssey Project." Activation is an important concept to you as evidenced by your Tedx Talk. During this presentation, you told the audience how you came to be activated to become involved in changing the criminal justice system and described activation as a more powerful form of activism where you work to create change within the hearts and minds of the community. In the video, you indicated you would spend the rest of your life working on criminal justice reform and further stated that "...we are either actively working to end these cycles of injustice, and marginalization and oppression or we are participating in their perpetuation. There simply is no middle ground." You also posted your April 6, 2019, Tedx Talk to your Facebook page and concluded "If these systems of injustice, marginalization, and oppression are going to change in our lifetime it will be because more people have come under the weight of these issues, find themselves in the solution, and leverage whatever talent, network, or resources they have towards ending them."

Furthering a personal agenda by using your position as a Pardon and Parole Board member disregards the constitutional and ethical duties of your position. For example, in an article published in August 1, 2019, you discuss this mission with the author. Published in *Nations Media*, the article titled "The Way Down: Adam Luck's Familial Advocacy," states you have "chosen a few key ways to engage" in order to accomplish your goals of reform: One, by using your governor-appointed role on the Pardon and Parole Board as a way "to change outcomes for those imprisoned in Oklahoma;" and secondly, by "spreading awareness" based on the principle, that "If more Oklahomans know about the condition of our criminal justice system, then presumably more people will act to reform it when the time comes to vote for new

city and state officials.” It is apparent that you publicly promote your personal views and are using your position as a Pardon and Parole Board member to promote that agenda.

In your opinion article published in the *The Oklahoman* on November 17, 2019, you reveal that your “professed values” take precedence when advocating for the release of prisoners. In addition, your opinion letter in the *Oklahoman*, titled *The case for sentencing reform*, urged public support for the ballot initiative and is a clear violation of Oklahoma Ethics Rule 2.9, which states that “No state officer or employee shall engage in activities designed to influence the results of an election for state office or a state question during hours in which the state officer or employee is in official work status or at any time while wearing a uniform or wearing identification that identifies that person as a state officer or employee. This prohibition shall not apply to elected state officers.” 74 O.S. § Rule 2.9 (emphasis added).

In the article, you openly identify yourself as a member of the Pardon and Parole Board and the newspaper credits the editorial to you as “a member of the Oklahoma Pardon and Parole Board and CEO of City Care.” Once again, you blur the lines between your personal views and your public duties by using your position as a Pardon and Parole Board member as a basis for your expertise on the prison population, and to enhance your credibility to influence the public in support of the ballot initiative. Your own words speak for themselves on this matter, you openly urged Oklahomans to vote for the initiative. You subsequently placed this Op-Ed on your social media accounts, where it remains as of the writing of this letter, (Facebook and Twitter) as well as your own website (www.adamluck.us). All three identify your role as a member of the Pardon and Parole Board.

Again at a presentation to the OK Business Ethics Consortium on March 4, 2020, titled “What I Learned About Justice and Mercy by Serving on the State Board of Corrections Parole Board,” you exploit your position as a Pardon and Parole Board member by boasting about the steep rise in parole grant rates since your appointment, and even questioning, what should be defined as a “crime” in Oklahoma. Obviously, you are entitled to your opinions; however, making appearances where you are promoted as Pardon and Parole member and the constant use of the term “we” when referring to Board decisions, significantly blurs the lines between your personal views and that of the Pardon and Parole Board as a whole.

Your inability to act as an impartial board member is further evidenced by your willingness to make a decision based upon one side before even hearing from the State or the victims. For instance On July 10, 2019 you posted on your Twitter account that you would be considering the case of Tondalo Hall the next week. You indicated that her commutation had been denied in both 2015 and 2018 and stated, “there are many facts surrounding her sentencing, but in the end the outcome of her case surfaces important questions of justice and how we view survivors of domestic violence.” Imbedded within your tweet was an article in the Washington Post from September 5, 2015 which outlines Ms. Hall’s version of events, indicating that you had spent time researching the issues outside the context of the information presented to the parole board and suggesting you had a predetermined position. In 2014, you were interviewed for an article in BuzzFeed entitled, “Enabling Child Abuse and Why Oklahoma Imprisons So Many Women”. You were quoted as saying “Laws like that are keeping people in prison when they may actually be simply in need of help.” You indicated that the enabling child abuse law is “definitely something that can fit into the reform that takes place.” The article included a story about Tondalo Hall. In 2018, prior to your appointment to the parole board, while serving on the Board for the Department of Corrections, you advocated for a plan to exclude from the child abuse statutes, “failure to protect” conduct and what you referred to as “situational neglect” and pushed for the creation of a separate penalty with a 5 year maximum sentence. You have stated that, “We must now find a

good reason to keep someone in prison, rather than searching for a good reason to let them out. Instead of asking them “Why should you get out prison? We’re asking ourselves, “Why should we keep them in?” This position indicates a predisposition towards release and ignores the work of the prosecutors, defense attorneys, victims, witnesses, judges, juries, appeal courts all who actually spent months and years investigating their crimes and prosecuting their crimes. You keep them in because that was the mandate of the people who had the mandate to handle these crimes.

It is also important to note the Oklahoma Attorney General’s position on conflicts of interest:

“When addressing questions with respect to a possible conflict of interest, it appears that a standard which may be derived from the authorities is that public policy is contravened whenever a public official of a state entity places himself in a position which is inconsistent with his public function or which interferes with his unbiased performance of his duties or has a tendency to induce him to violate such duty regardless of whether it can be shown that the public actually suffered any detriment. 1982 OK AG 16, citing *United States v. Mississippi Valley Generating*, 364 U.S. 520, 81 S.Ct. 294, 5 L.Ed.2d 268 (1961); *Youngblood v. Consolidated School District No. 3, Payne County*, 104 Okl. 235, 230 P. 910 (1924); *Stigall v. City of Taft, Cal.*, 375 P.2d 289 (1962). 12 Okl. Op.A.G. 355, Attorney General Opinion 80-212.

It is clear that a conflict of interest exists and that you should immediately recuse from consideration of the listed inmates.

Furthermore, while not fully discussed herein, there are numerous other examples demonstrating your lack of impartiality on social media platforms on specific case types, sentences of offenders and even applicants that have or will potentially appear before the board.

As discussed, impartiality is constitutionally mandated in the performance of the duties of a Pardon and Parole Board member and avoiding conflicts of interest is one way to accomplish this goal. Pursuant to 74 O.S. § Rule 4.4, a state officer or employee shall not use his or her State office for private gain; the endorsement of any product, service, or enterprise; for the private gain of a family member; or for the private gain of persons with whom the state officer seeks employment or business relations. These restrictions include nonprofit organizations of which the state officer is an officer or member. Your status as a member of the Board of Directors for the Center for Employment Opportunities (CEO) creates an obvious conflict of interest as parolees are often referred to CEO for jobs.

In conclusion, while we are all encouraged to have and are entitled to our own beliefs, the personal agendas of a governmental official cannot override the constitutional duties required of his or her appointed position. This request for recusal is not an attempt to disparage your personal views, but is made to ensure that all parties in the justice system are heard and can be afforded an impartial review by the Pardon and Parole Board. You have publicly advocated for the reduction of Oklahoma’s prison population and have promoted your mission. Unfortunately, your mission has been a one-sided advocacy for inmates, without providing the victims of crimes and the suffering they have endured any voice in your rhetoric for reform. Such activism clearly does not impartially maintain “the delicate balance between public safety, victim’s rights, and the successful re-integration of the offender” espoused by the values of the board. Pursuant to Ethics Rule 4.7, there is no doubt that any “reasonable person,” who has

read or heard your opinions on criminal justice reform or has knowledge of your Board position with CEO, would question your ability to provide an impartial review. This position requires that you recuse from the listed matters. Bottom line, if you wish to campaign for a cause or a change in our state laws that is your personal prerogative, but it is not your professional prerogative to promote your cause when such actions conflict with the constitutional duties of your position on the Pardon and Parole Board. It is my hope that you can recognize your ethical and legal duties to the citizens of Oklahoma and will make the decision to voluntarily withdraw your consideration in the listed cases.

Respectfully,

A handwritten signature in black ink, appearing to read "Laura Austin Thomas". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Laura Austin Thomas
District Attorney
District 9
Payne & Logan County